



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB2518

Introduced 2/17/2005, by Rep. Jack McGuire

#### SYNOPSIS AS INTRODUCED:

305 ILCS 5/5-5.4 from Ch. 23, par. 5-5.4  
305 ILCS 5/5-5.5 from Ch. 23, par. 5-5.5

Amends the Illinois Public Aid Code. Provides that under the Medicaid program, the Department of Public Aid's standards of payment for long-term care must take into account a nursing facility's transactions with related individuals or entities, including overpayments made to a related individual or entity. Provides for deductions from the Medicaid reimbursement otherwise due a nursing facility if the facility (i) had combined transactions with related individuals and related entities totaling more than 10% of the facility's total expenses for a fiscal year or (ii) made payments to a related entity that exceeded the entity's operating costs for a fiscal year. Provides that in determining payment rates for long-term care, the Department shall assure the opportunity for a profit not to exceed 10% of a facility's total revenue for a fiscal year (instead of simply "a profit"). Provides for deductions from the Medicaid reimbursement otherwise due a facility if the facility (i) failed to apply any profits in excess of 10% of revenues to patient-care-related expenses or (ii) paid a salary to a person holding an ownership interest in the facility or in a related entity that exceeded 1% of the facility's Medicaid reimbursement. Effective January 1, 2006.

LRB094 07494 DRJ 41052 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning public aid.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by  
5 changing Sections 5-5.4 and 5-5.5 as follows:

6 (305 ILCS 5/5-5.4) (from Ch. 23, par. 5-5.4)

7 Sec. 5-5.4. Standards of Payment - Department of Public  
8 Aid. The Department of Public Aid shall develop standards of  
9 payment of skilled nursing and intermediate care services in  
10 facilities providing such services under this Article which:

11 (1) Provide for the determination of a facility's payment  
12 for skilled nursing and intermediate care services on a  
13 prospective basis. The amount of the payment rate for all  
14 nursing facilities certified by the Department of Public Health  
15 under the Nursing Home Care Act as Intermediate Care for the  
16 Developmentally Disabled facilities, Long Term Care for Under  
17 Age 22 facilities, Skilled Nursing facilities, or Intermediate  
18 Care facilities under the medical assistance program shall be  
19 prospectively established annually on the basis of historical,  
20 financial, and statistical data reflecting actual costs from  
21 prior years, which shall be applied to the current rate year  
22 and updated for inflation, except that the capital cost element  
23 for newly constructed facilities shall be based upon projected  
24 budgets. The annually established payment rate shall take  
25 effect on July 1 in 1984 and subsequent years. No rate increase  
26 and no update for inflation shall be provided on or after July  
27 1, 1994 and before July 1, 2005, unless specifically provided  
28 for in this Section. The changes made by this amendatory Act of  
29 the 93rd General Assembly extending the duration of the  
30 prohibition against a rate increase or update for inflation are  
31 effective retroactive to July 1, 2004.

32 For facilities licensed by the Department of Public Health

1 under the Nursing Home Care Act as Intermediate Care for the  
2 Developmentally Disabled facilities or Long Term Care for Under  
3 Age 22 facilities, the rates taking effect on July 1, 1998  
4 shall include an increase of 3%. For facilities licensed by the  
5 Department of Public Health under the Nursing Home Care Act as  
6 Skilled Nursing facilities or Intermediate Care facilities,  
7 the rates taking effect on July 1, 1998 shall include an  
8 increase of 3% plus \$1.10 per resident-day, as defined by the  
9 Department.

10 For facilities licensed by the Department of Public Health  
11 under the Nursing Home Care Act as Intermediate Care for the  
12 Developmentally Disabled facilities or Long Term Care for Under  
13 Age 22 facilities, the rates taking effect on July 1, 1999  
14 shall include an increase of 1.6% plus \$3.00 per resident-day,  
15 as defined by the Department. For facilities licensed by the  
16 Department of Public Health under the Nursing Home Care Act as  
17 Skilled Nursing facilities or Intermediate Care facilities,  
18 the rates taking effect on July 1, 1999 shall include an  
19 increase of 1.6% and, for services provided on or after October  
20 1, 1999, shall be increased by \$4.00 per resident-day, as  
21 defined by the Department.

22 For facilities licensed by the Department of Public Health  
23 under the Nursing Home Care Act as Intermediate Care for the  
24 Developmentally Disabled facilities or Long Term Care for Under  
25 Age 22 facilities, the rates taking effect on July 1, 2000  
26 shall include an increase of 2.5% per resident-day, as defined  
27 by the Department. For facilities licensed by the Department of  
28 Public Health under the Nursing Home Care Act as Skilled  
29 Nursing facilities or Intermediate Care facilities, the rates  
30 taking effect on July 1, 2000 shall include an increase of 2.5%  
31 per resident-day, as defined by the Department.

32 For facilities licensed by the Department of Public Health  
33 under the Nursing Home Care Act as skilled nursing facilities  
34 or intermediate care facilities, a new payment methodology must  
35 be implemented for the nursing component of the rate effective  
36 July 1, 2003. The Department of Public Aid shall develop the

1 new payment methodology using the Minimum Data Set (MDS) as the  
2 instrument to collect information concerning nursing home  
3 resident condition necessary to compute the rate. The  
4 Department of Public Aid shall develop the new payment  
5 methodology to meet the unique needs of Illinois nursing home  
6 residents while remaining subject to the appropriations  
7 provided by the General Assembly. A transition period from the  
8 payment methodology in effect on June 30, 2003 to the payment  
9 methodology in effect on July 1, 2003 shall be provided for a  
10 period not exceeding 2 years after implementation of the new  
11 payment methodology as follows:

12 (A) For a facility that would receive a lower nursing  
13 component rate per patient day under the new system than  
14 the facility received effective on the date immediately  
15 preceding the date that the Department implements the new  
16 payment methodology, the nursing component rate per  
17 patient day for the facility shall be held at the level in  
18 effect on the date immediately preceding the date that the  
19 Department implements the new payment methodology until a  
20 higher nursing component rate of reimbursement is achieved  
21 by that facility.

22 (B) For a facility that would receive a higher nursing  
23 component rate per patient day under the payment  
24 methodology in effect on July 1, 2003 than the facility  
25 received effective on the date immediately preceding the  
26 date that the Department implements the new payment  
27 methodology, the nursing component rate per patient day for  
28 the facility shall be adjusted.

29 (C) Notwithstanding paragraphs (A) and (B), the  
30 nursing component rate per patient day for the facility  
31 shall be adjusted subject to appropriations provided by the  
32 General Assembly.

33 For facilities licensed by the Department of Public Health  
34 under the Nursing Home Care Act as Intermediate Care for the  
35 Developmentally Disabled facilities or Long Term Care for Under  
36 Age 22 facilities, the rates taking effect on March 1, 2001

1 shall include a statewide increase of 7.85%, as defined by the  
2 Department.

3 For facilities licensed by the Department of Public Health  
4 under the Nursing Home Care Act as Intermediate Care for the  
5 Developmentally Disabled facilities or Long Term Care for Under  
6 Age 22 facilities, the rates taking effect on April 1, 2002  
7 shall include a statewide increase of 2.0%, as defined by the  
8 Department. This increase terminates on July 1, 2002; beginning  
9 July 1, 2002 these rates are reduced to the level of the rates  
10 in effect on March 31, 2002, as defined by the Department.

11 For facilities licensed by the Department of Public Health  
12 under the Nursing Home Care Act as skilled nursing facilities  
13 or intermediate care facilities, the rates taking effect on  
14 July 1, 2001 shall be computed using the most recent cost  
15 reports on file with the Department of Public Aid no later than  
16 April 1, 2000, updated for inflation to January 1, 2001. For  
17 rates effective July 1, 2001 only, rates shall be the greater  
18 of the rate computed for July 1, 2001 or the rate effective on  
19 June 30, 2001.

20 Notwithstanding any other provision of this Section, for  
21 facilities licensed by the Department of Public Health under  
22 the Nursing Home Care Act as skilled nursing facilities or  
23 intermediate care facilities, the Illinois Department shall  
24 determine by rule the rates taking effect on July 1, 2002,  
25 which shall be 5.9% less than the rates in effect on June 30,  
26 2002.

27 Notwithstanding any other provision of this Section, for  
28 facilities licensed by the Department of Public Health under  
29 the Nursing Home Care Act as skilled nursing facilities or  
30 intermediate care facilities, if the payment methodologies  
31 required under Section 5A-12 and the waiver granted under 42  
32 CFR 433.68 are approved by the United States Centers for  
33 Medicare and Medicaid Services, the rates taking effect on July  
34 1, 2004 shall be 3.0% greater than the rates in effect on June  
35 30, 2004. These rates shall take effect only upon approval and  
36 implementation of the payment methodologies required under

1 Section 5A-12.

2 Notwithstanding any other provisions of this Section, for  
3 facilities licensed by the Department of Public Health under  
4 the Nursing Home Care Act as skilled nursing facilities or  
5 intermediate care facilities, the rates taking effect on  
6 January 1, 2005 shall be 3% more than the rates in effect on  
7 December 31, 2004.

8 For facilities licensed by the Department of Public Health  
9 under the Nursing Home Care Act as Intermediate Care for the  
10 Developmentally Disabled facilities or as long-term care  
11 facilities for residents under 22 years of age, the rates  
12 taking effect on July 1, 2003 shall include a statewide  
13 increase of 4%, as defined by the Department.

14 Rates established effective each July 1 shall govern  
15 payment for services rendered throughout that fiscal year,  
16 except that rates established on July 1, 1996 shall be  
17 increased by 6.8% for services provided on or after January 1,  
18 1997. Such rates will be based upon the rates calculated for  
19 the year beginning July 1, 1990, and for subsequent years  
20 thereafter until June 30, 2001 shall be based on the facility  
21 cost reports for the facility fiscal year ending at any point  
22 in time during the previous calendar year, updated to the  
23 midpoint of the rate year. The cost report shall be on file  
24 with the Department no later than April 1 of the current rate  
25 year. Should the cost report not be on file by April 1, the  
26 Department shall base the rate on the latest cost report filed  
27 by each skilled care facility and intermediate care facility,  
28 updated to the midpoint of the current rate year. In  
29 determining rates for services rendered on and after July 1,  
30 1985, fixed time shall not be computed at less than zero. The  
31 Department shall not make any alterations of regulations which  
32 would reduce any component of the Medicaid rate to a level  
33 below what that component would have been utilizing in the rate  
34 effective on July 1, 1984.

35 (2) Shall take into account the actual costs incurred by  
36 facilities in providing services for recipients of skilled

1 nursing and intermediate care services under the medical  
2 assistance program.

3 (2.5) Take into account a facility's transactions with a  
4 related individual or entity, including any overpayment made by  
5 the facility to a related entity, as provided in this item  
6 (2.5).

7 A facility must disclose in each cost report filed with the  
8 Department of Public Aid all relevant information regarding  
9 related entities, including:

10 (A) Every individual or organization that holds a legal  
11 interest in the facility.

12 (B) Every individual or entity that holds a legal  
13 interest in the facility and also holds a legal interest in  
14 an entity that provides reimbursable goods and services to  
15 the facility or its residents.

16 (C) The total compensation for each individual listed  
17 in paragraph (A) or (B), including, but not limited to:  
18 salary, benefits, dividends, and bonuses, for the fiscal  
19 year for which the cost report is filed.

20 A facility may not have combined transactions with related  
21 individuals and related entities in excess of 10% of the  
22 facility's total expenses for a particular fiscal year. The  
23 Department shall deduct from a facility's reimbursements under  
24 this Article the amount of any payment by the facility to a  
25 related entity in excess of 10% of the facility's total  
26 expenses reported on its most recently filed cost report.

27 A facility may not pay to a related individual or entity a  
28 sum in excess of the related entity's operating costs on behalf  
29 of the facility. The Department shall deduct any payment by a  
30 facility to a related entity in excess of the related entity's  
31 operating costs on behalf of the facility from the facility's  
32 reimbursements under this Article for the following year.

33 For purposes of this item (2.5):

34 "Related individual or entity" means (i) an individual or  
35 entity with a 5% or greater ownership interest in each of 2 or  
36 more nursing facilities or in both a nursing facility and any

1 entity that conducts transactions with any nursing facility, or  
2 (ii) an entity with any ownership interest held by relatives of  
3 the owners of a nursing facility.

4 "Relatives" includes spouses, children, parents, brothers  
5 and sisters, grandparents, grandchildren, parents-in-law,  
6 sisters-in-law or brothers-in-law, sons-in-law or  
7 daughters-in-law, aunts, uncles, and cousins, as is consistent  
8 with the Department of Public Aid's rules for filing Medicaid  
9 cost reports.

10 "Operating cost of a related entity" means the actual cost  
11 of any goods or services provided by a related entity to a  
12 facility, as is consistent with the Department of Public Aid's  
13 rules for filing Medicaid cost reports.

14 (3) Shall take into account the medical and psycho-social  
15 characteristics and needs of the patients.

16 (4) Shall take into account the actual costs incurred by  
17 facilities in meeting licensing and certification standards  
18 imposed and prescribed by the State of Illinois, any of its  
19 political subdivisions or municipalities and by the U.S.  
20 Department of Health and Human Services pursuant to Title XIX  
21 of the Social Security Act.

22 The Department of Public Aid shall develop precise  
23 standards for payments to reimburse nursing facilities for any  
24 utilization of appropriate rehabilitative personnel for the  
25 provision of rehabilitative services which is authorized by  
26 federal regulations, including reimbursement for services  
27 provided by qualified therapists or qualified assistants, and  
28 which is in accordance with accepted professional practices.  
29 Reimbursement also may be made for utilization of other  
30 supportive personnel under appropriate supervision.

31 (Source: P.A. 92-10, eff. 6-11-01; 92-31, eff. 6-28-01; 92-597,  
32 eff. 6-28-02; 92-651, eff. 7-11-02; 92-848, eff. 1-1-03; 93-20,  
33 eff. 6-20-03; 93-649, eff. 1-8-04; 93-659, eff. 2-3-04; 93-841,  
34 eff. 7-30-04.)

1           Sec. 5-5.5. Elements of Payment Rate.

2           (a) The Department of Public Aid shall develop a  
3 prospective method for determining payment rates for skilled  
4 nursing and intermediate care services in nursing facilities  
5 composed of the following cost elements:

6           (1) Standard Services, with the cost of this component  
7 being determined by taking into account the actual costs to  
8 the facilities of these services subject to cost ceilings  
9 to be defined in the Department's rules.

10          (2) Resident Services, with the cost of this component  
11 being determined by taking into account the actual costs,  
12 needs and utilization of these services, as derived from an  
13 assessment of the resident needs in the nursing facilities.  
14 The Department shall adopt rules governing reimbursement  
15 for resident services as listed in Section 5-1.1. Surveys  
16 or assessments of resident needs under this Section shall  
17 include a review by the facility of the results of such  
18 assessments and a discussion of issues in dispute with  
19 authorized survey staff, unless the facility elects not to  
20 participate in such a review process. Surveys or  
21 assessments of resident needs under this Section may be  
22 conducted semi-annually and payment rates relating to  
23 resident services may be changed on a semi-annual basis.  
24 The Illinois Department shall initiate a project, either on  
25 a pilot basis or Statewide, to reimburse the cost of  
26 resident services based on a methodology which utilizes an  
27 assessment of resident needs to determine the level of  
28 reimbursement. This methodology shall be different from  
29 the payment criteria for resident services utilized by the  
30 Illinois Department on July 1, 1981. On March 1, 1982, and  
31 each year thereafter, until such time when the Illinois  
32 Department adopts the methodology used in such project for  
33 use statewide, the Illinois Department shall report to the  
34 General Assembly on the implementation and progress of such  
35 project. The report shall include:

36           (A) A statement of the Illinois Department's goals

1 and objectives for such project;

2 (B) A description of such project, including the  
3 number and type of nursing facilities involved in the  
4 project;

5 (C) A description of the methodology used in such  
6 project;

7 (D) A description of the Illinois Department's  
8 application of the methodology;

9 (E) A statement on the methodology's effect on the  
10 quality of care given to residents in the sample  
11 nursing facilities; and

12 (F) A statement on the cost of the methodology used  
13 in such project and a comparison of this cost with the  
14 cost of the current payment criteria.

15 (3) Ancillary Services, with the payment rate being  
16 developed for each individual type of service. Payment  
17 shall be made only when authorized under procedures  
18 developed by the Department of Public Aid.

19 (4) Nurse's Aide Training, with the cost of this  
20 component being determined by taking into account the  
21 actual cost to the facilities of such training.

22 (5) Real Estate Taxes, with the cost of this component  
23 being determined by taking into account the figures  
24 contained in the most currently available cost reports  
25 (with no imposition of maximums) updated to the midpoint of  
26 the current rate year for long term care services rendered  
27 between July 1, 1984 and June 30, 1985, and with the cost  
28 of this component being determined by taking into account  
29 the actual 1983 taxes for which the nursing homes were  
30 assessed (with no imposition of maximums) updated to the  
31 midpoint of the current rate year for long term care  
32 services rendered between July 1, 1985 and June 30, 1986.

33 (b) In developing a prospective method for determining  
34 payment rates for skilled nursing and intermediate care  
35 services in nursing facilities, the Department of Public Aid  
36 shall consider the following cost elements:

1 (1) Reasonable capital cost determined by utilizing  
2 incurred interest rate and the current value of the  
3 investment, including land, utilizing composite rates, or  
4 by utilizing such other reasonable cost related methods  
5 determined by the Department. However, beginning with the  
6 rate reimbursement period effective July 1, 1987, the  
7 Department shall be prohibited from establishing,  
8 including, and implementing any depreciation factor in  
9 calculating the capital cost element.

10 (2) Profit, with the actual amount being produced and  
11 accruing to the providers in the form of a return on their  
12 total investment, on the basis of their ability to  
13 economically and efficiently deliver a type of service. The  
14 method of payment may assure the opportunity for a profit  
15 not exceeding 10% of the facility's total revenue for a  
16 particular fiscal year, but shall not guarantee or  
17 establish a specific amount as a cost.

18 (b-1) A facility must treat any profits in excess of 10% as  
19 moneys earmarked for patient care related expenses for the  
20 following fiscal year. The Department shall deduct from a  
21 facility's reimbursements under this Article the amount of the  
22 facility's profits in excess of 10% of revenues from 2 years  
23 prior to the current fiscal year not applied to  
24 patient-care-related expenses in the fiscal year immediately  
25 prior to the current fiscal year.

26 Any salary paid to a person holding an ownership interest  
27 in a facility or in a related entity in a particular fiscal  
28 year may not exceed the equivalent of 1% of that facility's  
29 reimbursements under this Article for that fiscal year. The  
30 Department shall deduct from a facility's reimbursements the  
31 amount of any salary paid to a person holding an ownership  
32 interest in the facility or in a related entity that exceeds 1%  
33 of that facility's reimbursements under this Article for a  
34 particular fiscal year.

35 For purposes of this subsection (b-1):

36 "Related individual or entity" means (i) an individual or

1 entity with a 5% or greater ownership interest in each of 2 or  
2 more nursing facilities or in both a nursing facility and any  
3 entity that conducts transactions with any nursing facility, or  
4 (ii) an entity with any ownership interest held by relatives of  
5 the owners of a nursing facility.

6 "Relatives" includes spouses, children, parents, brothers  
7 and sisters, grandparents, grandchildren, parents-in-law,  
8 sisters-in-law or brothers-in-law, sons-in-law or  
9 daughters-in-law, aunts, uncles, and cousins, as is consistent  
10 with the Department of Public Aid's rules for filing Medicaid  
11 cost reports.

12 "Operating cost of a related entity" means the actual cost  
13 of any goods or services provided by a related entity to a  
14 facility, as is consistent with the Department of Public Aid's  
15 rules for filing Medicaid cost reports.

16 "Patient-care-related expenses" means any expense listed  
17 in the "General Services" or "Health Care and Programs" cost  
18 centers as defined in the Department of Public Aid's rules for  
19 filing Medicaid cost reports.

20 (c) The Illinois Department may implement the amendatory  
21 changes to this Section made by this amendatory Act of 1991  
22 through the use of emergency rules in accordance with the  
23 provisions of Section 5.02 of the Illinois Administrative  
24 Procedure Act. For purposes of the Illinois Administrative  
25 Procedure Act, the adoption of rules to implement the  
26 amendatory changes to this Section made by this amendatory Act  
27 of 1991 shall be deemed an emergency and necessary for the  
28 public interest, safety and welfare.

29 (d) No later than January 1, 2001, the Department of Public  
30 Aid shall file with the Joint Committee on Administrative  
31 Rules, pursuant to the Illinois Administrative Procedure Act, a  
32 proposed rule, or a proposed amendment to an existing rule,  
33 regarding payment for appropriate services, including  
34 assessment, care planning, discharge planning, and treatment  
35 provided by nursing facilities to residents who have a serious  
36 mental illness.

1 (Source: P.A. 93-632, eff. 2-1-04.)

2 Section 99. Effective date. This Act takes effect January  
3 1, 2006.